Google Inc. et al v. Egger et al

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Exhibit 16

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Calendar No. 643

95th CONGRESS
2d Session

S. 1566

[Report No. 95-604]

[Report No. 95-701]

IN THE SENATE OF THE UNITED STATES

May 18 (legislative day, May 16), 1977

Mr. Kennedy (for himself, Mr. Bayh, Mr. Eastland, Mr. Inouye, Mr. McClellan, Mr. Mathias, Mr. Nelson, Mr. Thurmond, Mr. Huddleston, and Mr. Garn) introduced the following bill; which was read twice and referred by unanimous consent to the Committee on the Judiciary, and, if and when reported, then to the Select Committee on Intelligence

November 15 (legislative day, November 1), 1977

Reported by Mr. Kennedy, with amendments

[Omit the part struck through and insert the part printed in italic]

November 15 (legislative day, November 1), 1977

Referred, by unanimous consent, to the Select Committee on Intelligence

March 14 (legislative day, February 6), 1978

Reported by Mr. Bayh, with amendments

[Omit the part in boldface brackets and insert the part in boldface italic]

A BILL

To amend title 18, United States Code, to authorize applications for a court order approving the use of electronic surveillance to obtain foreign intelligence information.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Foreign Intelligence Surveillance Act of 1977" **[*1978*]**.

Sec. 2. Title 18, United States Code, is amended by adding a new chapter after chapter 119 as follows:

manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General where the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 2523.

"§ 2526. Use of information

"(a) Information concerning United States persons acquired from an electronic surveillance conducted pursuant to this chapter may be used and disclosed by Federal officers and employees without the consent of the United States person only for purposes specified in section 2521 (b) (8) (A) through (F) *and in accordance with the minimization procedures required by this chapter,* or for the enforcement of the criminal law if its use outweighs the possible harm to the national security. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character. *No information acquired from an electronic surveillance conducted pursuant to this chapter may be used or disclosed by Federal officers or employees except for lawful purposes.*

"(b) The minimization procedures required under this chapter shall not preclude the retention and disclosure, for law enforcement purposes, of any information which constitutes evidence of a crime if such disclosure is accompanied by a statement that such evidence, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

"(c) Whenever the Government *of the United States, of a State, or of a political subdivision thereof* intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, or other authority of the United States, *a State, or a political subdivision thereof,* any information obtained or derived from an electronic surveillance, the Government shall prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use the information or submit it in evidence notify the court in which the information is to be disclosed or used or, if the information is to be disclosed or used in or before another authority, shall notify a court in the district wherein the information is to be so disclosed or so used that the Government intends to so disclose or so use such information. ~~Whenever any court is so notified, or whenever a motion is made pursuant to section 3504 of this title, or any other statute or rule of the United States to suppress evidence on the grounds that it was obtained or derived from an unlawful electronic surveillance, the court, or where the motion is made before another authority, a court in the same district as the authority, shall notwithstanding any other~~

~~law, if the Government by affidavit asserts that an adversary hearing would harm the national security or the foreign affairs of the United States, review in camera and ex parte the application, order, and so much of the transcript of the surveillance as may be necessary to determine whether the surveillance was authorized and conducted in a manner that did not violate any right afforded by the Constitution and statutes of the United States to the person aggrieved: *Provided,* That in making this determination, the court shall disclose to the aggrieved person portions of the application, order, or transcript only where such disclosure is necessary for an accurate determination of the legality of the surveillance. If the court determines that the electronic surveillance of the person aggrieved was not lawfully authorized or conducted, the court shall in accordance with the requirements of law suppress that information which was obtained or evidence derived unlawfully from the electronic surveillance of the person aggrieved.~~

"(d) Any person who has been a subject of electronic surveillance and against whom evidence derived from such electronic surveillance is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or proceeding in or before any court, department officer, agency, regulatory body, or other authority of the United States, a State, or a

political subdivision thereof, may move to suppress the contents of any communication acquired by electronic surveillance, or evidence derived therefrom, on the grounds that—

"(1) the communication was unlawfully acquired; or

"(2) the surveillance was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceeding unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion.

"(e) Whenever any court is notified in accordance with subsection (c), or whenever a motion is made by an aggrieved person pursuant to subsection (d), to suppress evidence on the grounds that it was obtained or derived from an unlawful electronic surveillance, or whenever any motion or request is made by an aggrieved person pursuant to section 3504 of this title or any other statute or rule of the United States, to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance, the Federal court, or where the motion is made before another authority, a Federal court in the same district as the authority, shall, notwithstanding any other law, if the Govrnment by affidavit asserts that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and other materials relating to the sur-

veillance as may be necessary to determine whether the surveillance was authorized and conducted in a manner that did not violate any right afforded by the Constitution and statutes of the United States to the aggrieved person. In making this determination, the court shall disclose to the aggrieved person portions of the application, order, or other materials relating to the survillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance. If the court determines that the electronic surveillance of the aggrieved person was not lawfully authorized or conducted, the court shall in accordance with the requirements of law suppress the information obtained or evidence derived from the unlawful electronic surveillance. If the court determines that the surveillance was lawfully authorized and conducted, the court shall deny any motion for disclosure or discovery unless required by due process.

"~~(d)~~ *(f)* If an emergency employment of the electronic surveillance is authorized under section 2525 (d) and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

"(1) the fact of the application;

thereof and adding the following: "or engage in electronic surveillance, as defined in chapter 120: *Provided, however,* That before the information, facilities, or technical assistance may be provided, the investigative or law enforcement officer shall furnish to the officer, employee, or agent of the carrier either—

"(1) an order signed by the authorizing judge certifying that a court order directing such assistance has been issued; or

"(2) in the case of an emergency interception or electronic surveillance as provided for in section 2518 (7) of this chapter or section 2525 (d) of chapter 120, a certification under oath by the investigative or law enforcement officer that the applicable statutory requirements have been met,

and setting forth the period of time for which the electronic surveillance is authorized and describing the facilities from which the communication is to be acquired. Any violation of this subsection by a communication common carrier or an officer, employee, or agency thereof, shall render the carrier liable for the civil damages provided for in section 2520. ***No communication common carrier or officer, employee, or agent thereof shall disclose the existence of any interception under this chapter or electronic surveillance, as defined in***

chapter 120, with respect to which the common carrier has been furnished either an order or certification under this subparagraph, except as may otherwise be lawfully ordered.".

(c) (1) Section 2511 (2) (b) is amended by inserting the words "or otherwise engage in electronic surveillance, as defined in chapter 120," after the word "radio".

(2) Section 2511 (2) (c) is amended by inserting the words "or engage in electronic surveillance, as defined in chapter 120," after the words "oral communication" and by inserting the words "or such surveillance" after the last word in the paragraph and before the period.

(3) Section 2511 (2) is amended by adding at the end of the section the following provisions:

"(e) Notwithstanding any other provision of this title or sections 605 or 606 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty ***under procedures approved by the Attorney General*** to conduct electronic surveillance as defined in section 2521 (b) (6) of chapter 120 without a court order for the sole purpose of:

"(i) testing the capability of electronic equipment, provided that *no particular United States person shall be intentionally targeted for testing purposes without*